

COMPLYING WITH THE TELEMARKETING SALES RULE

- REQUIRED DISCLOSURES
- PROHIBITED MISREPRESENTATIONS
- ASSISTING AND FACILITATING AND
CREDIT CARD LAUNDERING
- PAYMENT RESTRICTIONS
- VERIFIABLE AUTHORIZATION
- CALLING TIME RESTRICTIONS
- “DO NOT CALL” LISTS



A Business Guide Produced by the Federal Trade Commission in Cooperation



with the
Direct Marketing Association
April 1996





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- **Required Disclosures**
- **Prohibited Misrepresentations**
- **Assisting and Facilitating and Credit Card Laundering**
- **Payment Restrictions**
- **Verifiable Authorization**
- **Calling Time Restrictions**
- ***“Do Not Call”* Lists**
- **Prize Promotions**
- **Recordkeeping**

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Introduction

In August 1994, the Telemarketing and Consumer Fraud and Abuse Prevention Act became law. The purposes of the Act are to combat the growth of telemarketing fraud by providing law enforcement agencies with powerful new tools, and to give consumers new protections and guidance on how to tell the difference between fraudulent and legitimate telemarketing. Under the Act, the Federal Trade Commission (FTC) adopted the Telemarketing Sales Rule (“the Rule”) on August 16, 1995, to achieve those goals. The Rule was effective on December 31, 1995. The key provisions of the Rule require specific disclosures, prohibit misrepresentations, set limits on the times telemarketers may call consumers, prohibit calls after a consumer asks not to be called, set payment restrictions for the sale of certain goods and services, and require that specific business records be kept for two years. The Rule is not intended to affect any state or local telemarketing law. Therefore, an attorney general or other authorized state official may proceed with an

action in state court to enforce any of that state’s civil or criminal laws.

You should be aware that there is another law already in place that applies to telemarketing. The Federal Communications Commission (FCC) enforces the Telephone Consumer Protection Act (TCPA). See page 31 for information on how to learn more about the TCPA.

If you telemarket across state lines, whether by making outbound calls or by receiving calls in response to advertising, you may be subject to the Rule’s provisions. This booklet explains how you must comply. This booklet is the Federal Trade Commission staff’s view of what the law requires. It is not binding on the Commission. The Rule itself is at the end of this booklet.

If you have further questions after reading this booklet, contact:

**Division of Marketing Practices
Bureau of Consumer Protection
Federal Trade Commission
Washington, D.C. 20580
(202) 326-3128**



Additional sources of information mentioned in this booklet are listed on page 31.

Who Must Comply With The Telemarketing Sales Rule?

The Telemarketing Sales Rule covers telemarketing — any plan, program, or campaign to sell goods or services through interstate telephone calls. With some important exceptions explained below, any persons or companies that take part in any plan, program, or campaign to sell goods or services through interstate telephone calls must comply with the Rule. This is true whether, as “*telemarketers*,” they initiate or receive telephone calls to or from consumers, or whether, as “*sellers*,” they provide, offer to provide, or arrange to provide goods or services to consumers in exchange for payment.



Certain sections of the Rule also apply to persons or companies *other* than sellers or telemarketers if such persons or companies provide substantial assistance or support to sellers or telemarketers (explained on page 21). The Rule also applies to persons or companies that provide telemarketers with unauthorized access to the credit card system (explained on page 22).

Who Is *Not* Covered By The Telemarketing Sales Rule?

Some businesses and individuals are not covered

Some types of businesses are *not* covered by the Rule even though they may use interstate telephone calls to sell goods or services. The following four types of entities are not subject to the FTC's jurisdiction and therefore not covered by the Rule:

- Banks, federal credit unions, and federal savings and loans;

- Common carriers, such as long-distance telephone companies and airlines;
- Non-profit organizations — i.e., entities that are not organized to carry on business for their own profit or that of their members; and
- Companies engaged in the business of insurance, to the extent that this business is regulated by state law.

The four listed types of entities are not covered by the Rule only because they are specifically exempted from the FTC's jurisdiction; however, any other individual or company that contracts with one of these four types of entities to provide telemarketing services must comply with the Rule. For example, although banks are not covered by the Rule, a nonbank company that contracts

with a bank to provide telemarketing services on behalf of the bank is covered. Similarly, a non-airline company that contracts with an airline to provide telemarketing services on behalf of the airline is covered by the Rule, and a company that is acting for profit may be covered by the Rule if it sells goods or services of more than nominal value on

1 These entities are: brokers, dealers, transfer agents, municipal securities dealers, municipal securities brokers, government securities brokers, and government securities dealers (as those terms are defined in Section 3(a) of the Securities and Exchange Act of 1934); investment advisers (as that term is defined in Section 202(a) (11) of the Investment Advisers Act of 1940); investment companies (as that term is defined in Section 3(a) of the Investment Company Act of 1940); and futures commission merchants, including brokers, commodity trading advisers, commodity pool operators, leverage transaction merchants, floor brokers, or floor traders (as those terms are defined in Section 6(f) (1) of the Commodity Exchange Act).

behalf of a nonprofit corporation (see page 16).

In addition, under the provisions of the Telemarketing and Consumer Fraud and Abuse Prevention Act, a number of entities and individuals associated with them that sell investments and are subject to the jurisdiction of the Securities and Exchange Commission or the Commodity Futures Trading Commission are not covered by the Rule, even if they engage in a plan, program, or campaign to sell through interstate telephone calls.¹

Some Types of Calls Are Not Covered

Some types of ***calls*** also are not covered by the Rule, regardless of whether the ***business or individual*** making the call is covered. Here is a brief summary of the types of calls not covered, followed by a discussion of each in greater detail.

- calls placed by consumers in response to a catalog;

- 900-number calls;
- calls related to the sale of franchises or certain business opportunities;
- unsolicited calls from consumers;
- calls that are part of a transaction that involves a face-to-face sales presentation;
- business-to-business calls that do not involve retail sales of nondurable office or cleaning supplies;
- calls made in response to general media advertising (with some important exceptions, explained at page 10); and
- calls made in response to direct mail advertising (with some important exceptions, explained at page 10).

Most Calls Made in Response to a Catalog are Exempt

Generally, the Rule does not apply to calls placed by consumers in response to a catalog, so long as:

- the catalog contains a written description or illustration of the goods or services offered for sale;
- the catalog includes the business address of the seller;
- the catalog includes multiple pages of written material or illustrations;
- the catalog has been issued not less frequently than once a year; and
- ***the catalog seller does not solicit consumers by telephone but only receives calls initiated by consumers in response to the catalog, and during those calls from consumers takes orders only without further solicitation.*** (The catalog seller may, however, provide the consumer with information about — or attempt to sell the consumer — other items included in the same catalog which

prompted the consumer's call or in a substantially similar catalog.)

*If, during a telephone call, a telemarketer offers goods or services that **are not** included either in the catalog that prompted the consumer to call, or in a substantially similar catalog, then the sales transaction is covered by the Rule. Catalog merchandise sales also are covered by the FTC's Mail or Telephone Order Merchandise Rule. See page 31 for how to get more information on the Mail or Telephone Order Merchandise Rule.*

900-Number Calls Are Exempt

The Rule does not apply to 900-Number pay-per-call telephone calls. However, providers of pay-per-call services must comply with the FTC's 900-Number Rule. See page 31 for how to get more information on the 900-Number Rule.

Calls Relating to the Sale of Franchises Or Business Opportunities are Exempt

The Rule does not apply to calls relating to sales of franchises or business opportunities that are covered by the FTC's Franchise Rule. However, the Rule does apply to the telemarketing of business ventures **not** covered by the FTC's Franchise Rule. See page 31 for how to get more information on the Franchise Rule.

Unsolicited Calls from Consumers Are Exempt

Calls from consumers that are not the result of any solicitation by a seller or telemarketer are not covered by the Rule because they are not considered to be part of a telemarketing plan, program, or campaign to sell goods or services. These calls include, but are not limited to, incidental uses of the telephone by consumers such as making hotel, airline, car rental, or similar reservations, placing carry-out or restaurant delivery orders, calling a department store or other retailer without prompting from an advertisement or solicitation, or obtaining information or customer technical support.

Calls that are Part of a Transaction Involving A Face-to-Face Sales Presentation Are Exempt

The Rule does not cover telephone transactions that are not completed until after a face-to-face sales presentation by the seller, and the consumer is not required to pay or authorize payment until after such a presentation. This exemption is for both transactions that begin with a face-to-face sales presentation and are later completed in a telephone call, and transactions that begin with a telephone call, but are not completed until a later face-to-face sales presentation. The emphasis in this exemption is on the face-to-face contact between the buyer and seller.

The goal of the Rule is to protect consumers against deceptive or abusive practices that can arise in situations where the consumer has no direct contact — other than the telephone sales call itself — with an invisible and anonymous seller. A face-to-face meeting provides the consumer with more

information about, and direct contact with, the seller, and helps to limit potential problems the Rule is designed to remedy. (However, if the sale is made at the consumer's home or away from the seller's place of business, the seller must comply with the FTC's Cooling Off Rule. See page 31 for how to get more information on the Cooling Off Rule.)

Business-to-Business Calls That Do Not Involve the Sale of Nondurable Office or Cleaning Supplies Are Exempt

Most telephone calls between a telemarketer and a business are exempt from the Rule's coverage. *However, business-to-business calls involving the retail sale of nondurable office or cleaning supplies are covered by the Rule.* Examples of nondurable office or cleaning supplies include paper, pencils, solvents, copying machine toner, and ink — anything that, when utilized, is depleted and must be replaced. However, such goods as software, computer disks, copiers, computers, mops, and buckets are not nondurable because they are not depleted when used, but can be used over and over again.

Although sellers and telemarketers involved in telemarketing sales to businesses of nondurable office or cleaning supplies must comply with the Rule's requirements and prohibitions, the Rule specifically exempts them from the recordkeeping requirements. Thus, these sellers and telemarketers need not create or keep any particular records in order to comply with the Rule.

Most Calls Responding to General Media Advertising Are Exempt

The Rule generally does not apply to consumer calls made in response to general media advertising, such as television commercials, infomercials, home shopping programs, magazine and newspaper advertisements, Yellow Pages or similar general directory listings, and other forms of mass media advertising and solicitations. This exempts essentially all forms of advertising except direct mail (which is covered in another limited exemption, explained below).

However, the Rule does cover calls from con-

sumers in response to general media advertisements

relating to credit repair (explained on page 23), recovery services (explained on page 24), advance-fee loans (explained on page 25) or investment opportunities. An investment opportunity is anything that is offered, offered for sale, sold, or traded based on representations about past, present, or future income, profit, or appreciation. Examples of investment opportunities include art, rare coins, oil and gas leases, precious or strategic metals,

gemstones, or FCC lottery schemes. In addition, business ventures that are not covered by the FTC's Franchise Rule are investment opportunities.

Some Calls Responding to Direct Mail Advertising Are Exempt

Direct mail advertising includes any material — postcards, flyers, door hangers, brochures, “certificates,” or letters — sent to a person urging that person to call a specified telephone number regarding an offer of some sort. Direct mail usually employs the U.S. Postal Service, but may use a private courier or package delivery services.

Calls in response to a certain limited class of mail solicitations are exempt from Rule coverage: calls prompted by a direct mail solicitation that clearly, conspicuously, and truthfully makes certain disclosures required by the Rule. These disclosures are: cost and quantity; material restrictions, limitations or conditions; and any “no-refund” policy. (These disclosures are described more fully at pages 12 through 14.) Only calls elicited by this narrow class of direct mail solicitations enjoy this limited exemption. Thus, if you are a seller or telemarketer that uses direct mail, this exemption is available to you if and only if your direct mail solicitations clearly, conspicuously, and truthfully make all the disclosures required by the Rule.

There is no exemption for calls elicited by direct mail advertising that does ***not*** truthfully provide a consumer with the specific information required under the Rule. Moreover, ***there is no exemption for calls responding to any direct mail advertising that relates to credit repair (explained on page 23), recovery services (explained on page 24), advance-fee loans (explained on page 25), investment opportunities (explained on page 18), or prize promotions (explained on page 14), regardless of whether the advertisement makes all the disclosures required by the Rule.***

What Does The Rule Require Sellers and Telemarketers To Do?

The Rule Requires Sellers and Telemarketers to Disclose Material Information

The Rule requires a seller or telemarketer, whether making outbound calls to consumers or receiving inbound calls from consumers, to provide certain material information before that consumer pays for goods or services that are the subject of the sales offer. **Material** information is information that would likely affect a person's choice of goods or services, or their conduct regarding them. More simply, it is information necessary for a consumer to make an informed purchasing decision. Sellers and telemarketers may provide the material information either orally or in writing. In the case of outbound calls, however, there are certain items of information that a telemarketer must promptly disclose to consumers **orally** in the sales presentation, as explained in greater detail on pages 15 and 16. Failure to provide any of the required information in a "*clear and conspicuous*" manner, before the consumer pays for the goods or services offered, is a deceptive telemarketing act or practice that violates the Rule, and subjects a seller or telemarketer to a \$10,000 fine for each violation.

"Before a Consumer Pays:"

Before a seller or telemarketer obtains a consumer's consent to purchase, or persuades a consumer to send any full or partial payment, either by check, money order, wire, in cash, or by any other means, a seller or telemarketer must provide a consumer with the information required by the Rule. A seller or telemarketer also must provide the required information before requesting any credit card, bank account, or other information that a seller or telemarketer will or could use to obtain payment. In addition, a seller or telemarketer must provide a consumer with the required information before requesting, arranging for, or asking a consumer to request or arrange for a courier to pick up payment for the offered goods or services. Couriers include Federal Express, DHL, UPS, agents of the seller or telemarketer, or any other person who will go to a consumer's home to pick up payment for the offered goods or services.

"Clear and Conspicuous:"

Clear and conspicuous means that information is presented in a manner that a consumer will notice and understand. The goal is for the disclosures to be communicated as effectively as the sales message. When made in writing, clear and conspicuous information generally is printed in type of a size that a consumer can readily see and understand and with the same emphasis and degree of contrast with the background as is the sales offer, and is not "buried" on the back, bottom, or in unrelated information that a person would not

think to be important to read. Where a seller or telemarketer opts to make required disclosures in a written document that it sends to a consumer, followed by an out-bound sales call to the consumer, in order for the disclosures to be clear and conspicuous, they must be sufficiently close in time to the call to enable the consumer to associate the telephone call with the written disclosures. In the case of oral disclosures, clear and conspicuous means at a normal speed and in the same tone and volume as the sales offer.

What Information Does the Rule Require Sellers and Telemarketers to Provide to Consumers?

The law generally requires that when a seller or telemarketer offers to sell goods or services, the seller or telemarketer must provide the consumer with material information about the offered goods or services necessary to avoid misleading consumers. The term *material* means *likely to affect a person's choice of goods or services, or their conduct regarding them*. In other words, material information is information that a consumer needs to make an informed purchasing decision.

The Rule specifies four broad categories of material information that sellers and telemarketers must provide to consumers:

1. Cost and Quantity

The Rule requires a seller or telemarketer to disclose the total costs to purchase, receive, or use the offered goods or services. (It is sufficient to disclose the total number of installment payments, and the amount of each payment, to satisfy this requirement.) The Rule also requires a seller or telemarketer to tell a consumer the total quantity

of goods the consumer must pay for and receive. Both of these items of material information must be

provided to the consumer before that consumer pays for the goods or services that are the subject of the sales offer. Sellers and telemarketers may provide this material information either orally or in writing, as long as it is clear and conspicuous.

Sometimes, the total cost and quantity are not fixed when the initial transaction takes place, but are drawn out over time. For example, in a *negative option plan*, such as those offered by some record or book clubs, the consumer may agree to purchase a specific number of items over a specified time period. The consumer receives periodic announcements of the selections; each announcement describes the selection, which will be sent automatically and billed to the consumer unless the consumer tells the company not to send it. Similarly, a *continuity plan* offers subscriptions to collections of goods, and during the course of the plan, the consumer can opt to purchase some or all of the offered items in the collection. When consumers agree to buy an offered introductory selection they

also agree to receive additional selections on a regular schedule until they cancel their subscriptions.

Both negative option plans and continuity plans are structured to provide consumers the opportunity to purchase a series of products over time; the cost of the plan as a whole is determined by the number and type of items in the series the consumer decides to accept. Thus, in both continuity and negative option plans, at the time of the initial sales offer neither the seller nor the consumer necessarily knows the quantity of products the consumer will ultimately purchase, or the total cost for those products. To comply with the Rule, a seller or telemarketer that offers a negative option plan or a continuity plan need only disclose the total costs and quantity of goods or services that are part of the initial offer of the plan; the total quantity of additional goods or services, if any, that a consumer must purchase over the duration of the plan; and the cost, or range of costs, to purchase each individual additional good or service. (Negative option plans are subject to an FTC Rule. For information on how to learn more about the FTC's Negative Option Rule, see page 31.)

Cost and Quantity Disclosure in the Marketing of Credit Products: If a seller or telemarketer is offering credit products subject to the Truth in Lending Act (TILA) or Regulation Z, compliance with the credit disclosure requirements and the timing of those disclosures mandated by TILA or Regulation Z will constitute compliance with the total cost and quantity disclosure requirements of the Telemarketing Sales Rule with respect to the credit instrument itself. However, the cost and quantity of any goods or services purchased with that credit would also have to be disclosed. For information on how to learn more about TILA, see page 31.

2. Material Restrictions, Limitations, or Conditions

The Rule requires sellers and telemarketers to disclose to a consumer all material restrictions, limitations, or conditions to purchase, receive, or use goods or services that the seller or telemarketer is offering to the consumer. As noted above, **material** information is information that a consumer needs to make an informed purchase decision. So a material restriction, limitation, or condition is one that, if a consumer knew of it, would likely affect the consumer's decision to purchase offered goods or services, to purchase them at the offered price, or to purchase them from that particular seller. Here are some examples of material information that must be disclosed:

- A requirement that a consumer pay for offered goods or services by cashier's check, money order, or in cash;

The Rule Requires Prompt Oral Disclosures of Certain Information in Outbound Telemarketing Calls

advance in order to travel using the certificate, or that requires the consumer to incur expenses beyond the price of the certificate itself in order to redeem the certificate for a vacation.

Sellers and telemarketers may disclose information about material restrictions, limitations, or conditions to purchase, receive, or use offered goods or services either orally or in writing, as long as the information is clear and conspicuous and is disclosed before the consumer pays.

policy only if the seller or telemarketer makes a statement about the policy during the sales presentation. If the sales presentation includes a statement about such a policy, it must also disclose, clearly and conspicuously, all terms and conditions of the policy that would likely affect a consumer's decision on whether to purchase the offered goods or services.

3. No-Refund Policy

If the seller has a policy of honoring requests for refunds, cancellations of sales or orders, exchanges, or repurchases, the seller or telemarketer is required to disclose information about the

If the seller has a policy of **not** giving refunds, not allowing cancellation of sales or orders, not providing exchanges for goods or services, **or** not repurchasing the offered goods or services — in other words, a policy of “*all sales are final*” — the Rule requires the seller or telemarketer to inform consumers of this fact before they pay for the offered goods or services. This information may be given to consumers either orally or in writing, as long as the information is clear and conspicuous.



- In the case of an offer of a credit card, a requirement that a consumer must make a deposit in order to receive and use the offered card (in other words, that the credit card is a secured card); or
- In the case of a vacation certificate, a restriction, limitation, or condition that prevents a purchaser from using the certificate during the summer, or that requires a purchaser to make reservations a year in

4. Prize Promotions

A “prize promotion” includes (1) any sweepstakes or other game of chance, and (2) any representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize. A “prize” is anything offered and given to a consumer by chance.

In order for the element of chance to be present, all that is required under the Rule is that the consumer is guaranteed to receive an item and, at the time of the offer, the telemarketer does not identify the specific item that the person will receive. For example, if a seller or telemarketer sends out a solicitation promising recipients of the solicitation that they will receive one of four or five listed items, but the seller or telemarketer does not tell recipients which of the listed items they will receive, any item the consumer receives is a prize, and the solicitation is a prize promotion.

A seller or telemarketer that offers a prize promotion must provide consumers with several items of information before the consumer pays for any offered goods or services. This information may be given to consumers either orally or in writing, as long as the information is clear and conspicuous.

First, a seller or telemarketer must tell consumers the odds of winning the prize(s). If the odds cannot be calculated in advance because, for example, they depend upon the number of people who ultimately enter the promotion, the seller or telemarketer must tell consumers this fact, along with any other factors used in calculating the odds.

Second, a seller or telemarketer must tell consumers that they can participate in the prize promotion or win a prize without buying anything or making any payment. **Note: in outbound calls that offer a prize promotion, this information must be provided orally, in a prompt disclosure; see page 15.** A legitimate prize promotion does not require any purchase or payment of money to participate or win. If a purchase or payment of money is required to be eligible to win a prize, it is not a prize promotion; it is a lottery that is generally unlawful under federal and state lottery laws. Therefore, the Rule requires sellers or telemarketers that offer prize

promotions to tell consumers that they are not required to purchase anything or pay any money in order to participate in the promotion or win a prize.

Third, a seller or telemarketer must tell consumers how they can enter the prize promotion without paying any money or purchasing any goods or services. This disclosure must include either instructions on how to enter or an address or local or toll-free telephone number where consumers can get the no-purchase/no-payment entry information.

Finally, a seller or telemarketer must tell consumers of any material costs or conditions to receive or redeem any prize. For example, if one of the offered prizes is a “vacation,” but the recipient must pay for his or her own accommodations, this is a cost or condition that would likely affect a consumer’s response to the offer and must therefore be disclosed.

The Rule Requires Four Prompt Oral Disclosures in Outbound Calls

An outbound call is a call initiated by a telemarketer to a consumer. The Rule requires that a telemarketer making an outbound call **promptly** disclose, in a clear and conspicuous manner, four items of information:

- **The identity of the seller.** The seller is the entity that provides goods or services to the consumer in exchange for payment. The identity of the telemarketer, or person making the call, need not be disclosed if it is different from the identity of the seller. If the seller commonly uses a fictitious name that is registered with appropriate state authorities, that name may be disclosed instead of the seller's legal name.
- **That the purpose of the call is to sell goods or services.** The Rule does not require any "magic" words or phrases to explain the purpose of the call. The Rule only requires the purpose of the call be disclosed promptly to consumers. How the purpose of the call is described or explained is up to the seller or telemarketer, so long as it is not likely to mislead consumers.
- **The nature of the offered goods or services.** This is a brief description of items offered for sale.
- **In the case of a prize promotion, that no purchase or payment is necessary to participate or to win.** If the consumer asks, the telemarketer also must, without delay, disclose instructions on how to enter the prize promotion without paying any money or purchasing any goods or services.

"Promptly:" "Promptly" is defined by Webster's Dictionary as "performed at once or without delay." At a minimum, "promptly" means before any sales pitch is given. Required informa-

tion about a prize promotion must be given before or in conjunction with the description of the prize offered.

Multiple Purpose Calls. Some calls have more than a single purpose. They may involve the sale of goods or services along with some other objective, such as conducting a prize promotion or market research, or determining customer satisfaction. In any multiple purpose call where the seller or telemarketer is planning, in at least some of those calls, to sell goods or services, the four disclosures listed on the previous page must be made promptly, during the first part of the call, before the non-sales portion of the call takes place.

For example, a seller calls consumers to determine whether they are satisfied with a previous purchase and plans, during the course of that call, to move into a sales presentation if the seller determines that the consumer is satisfied. In this example, since the seller plans to make a sales presentation in at least some of its calls (even though the seller plans to terminate the call if the consumer is not satisfied), the seller must promptly make the four disclosures listed above during the initial portion of the call, before making lengthy inquiries about customer satisfaction.

On the other hand, a seller may make calls to welcome new customers and to inquire whether customers are satisfied with recently-purchased goods or services. If the seller does not plan, during any of these calls, to sell anything to

those customers, the four oral disclosures are not required. This is so even if, during such calls, customers ask about other goods or services offered by the seller, and the seller responds by describing those goods or services. Because the seller initially has no plans to sell goods or services during these calls, the disclosures are not required.

How does a for-profit company that telemarkets for a non-profit entity make the required oral disclosures?

In situations where a for-profit company makes interstate calls to solicit donations for a non-profit organization but offers no goods or services as an inducement to make a donation, the activity is not covered by the Rule. However, if goods or services (such as a book, a subscription, or a membership) are offered to induce donations, and the goods or services are of more than nominal value, the activity is covered and the required oral disclosures must be made. Here "nominal" means having an actual or stated value less than the amount of any contribution being solicited. In a situation where offered goods or services are of more than nominal value, to meet the requirement that the seller be identified, it is sufficient to state the name of the non-profit organization on whose behalf the call is being made. The examples below are sufficient to meet the requirements to promptly disclose the identity of the seller, the purpose of the call, and the nature of the offered goods or services:

"I am calling on behalf of [name of non-profit organization] to offer you a subscription to the organization's newsletter and to ask for a donation to help support the work of [name of non-profit organization]."

"I am calling for [name of non-profit organization] to seek your support. For a donation of \$25 or more [name of non-profit organization] will extend to you a one-year membership, which entitles you to [description of the membership]. And your donation will help us to continue the [non-profit organization's] important work . . ."

The Rule Prohibits Misrepresentations

The Rule generally prohibits a seller or telemarketer from making any false or misleading statement to induce anyone to pay for goods or services. For example, telemarketers cannot falsely claim that they need to obtain a consumer's bank account number or credit card number only for identification purposes, when in fact they use those numbers to obtain payment for

the goods or services offered. Similarly, a seller of precious metals cannot induce anyone to invest by falsely claiming that the seller offers the metals at or near wholesale price.

In addition, the Rule prohibits sellers and telemarketers from misrepresenting certain specific categories of information about a telemarketing transaction that are likely to affect a consumer's purchasing decision

regarding the goods or services offered. The Rule prohibits both express and implied misrepresentations; sellers and telemarketers cannot circumvent the Rule by creating a false impression in consumers' minds through the artful use of half-truths, misleading, or incomplete information. The seven categories of information that must not be misrepresented are set out below.

1. Cost and Quantity

The Rule prohibits a seller or telemarketer from misrepresenting the total costs to purchase, receive, or use the offered goods or services, or the quantity of goods or services offered at the stated price. For example, a telemarketer may not tell consumers that they may purchase a magazine subscription for three years at \$1.50 per month, when in fact the subscription is available at that price for only one year.

2. Material Restrictions, Limitations, or Conditions

The Rule prohibits sellers or telemarketers from misrepresenting any material restriction, limitation, or condition to purchase, receive, or use goods or services offered to the consumer. Thus, the Rule prohibits false or misleading statements about any restriction, limitation, or condition that is likely to affect the consumer's purchasing decision about the goods or services offered. For example, a seller may not falsely claim that a hotel certificate may be used any time at any major hotel chain in the country, when in fact it can only be used at certain times or at a limited number of hotels.

3. Performance, Efficacy, or Central Characteristics

Sellers and telemarketers may not misrepresent any material aspect of the performance, efficacy, nature, or central characteristics of offered goods or services. For example, it is a violation of the Rule to claim falsely any of the following:

- that a water processor offered for sale can eliminate all known contaminants from tap water;
- that a service offered by the seller can improve a person's credit rating;
- that a machine will operate properly with little or no maintenance;
- that precious metals outperform other types of investments;
- that a seller can recover money lost by the consumer in a previous telemarketing transaction; or
- that a purchaser of a business venture can earn *"more money in a week than you now earn in a year"* or can achieve specific levels of income.

4. Refund, Repurchase, or Cancellation Policies

The Rule prohibits any seller or telemarketer from misrepresenting any material aspect — one that likely would have an effect on the consumer's purchasing decision — of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies. As an example, this provision of the Rule prohibits a seller or telemarketer from claiming that *"our policy is to make our customers happy — if at any time you're not absolutely delighted, just send the merchandise back,"* if in fact there are time limits, *"restocking"* charges, or other important restrictions on the return of those goods. As another example, it is also a Rule violation for a seller or telemarketer to claim that tickets may be cancelled at any time up to the date of

2 Be advised that state laws vary as to the permissibility of recording telephone conversations and requirements to obtain consent of the recorded party. Consult an attorney for guidance on these issues.

the event, when requests for such cancellations will not be honored.

5. Material Aspects of Prize Promotions

The Rule prohibits any seller or telemarketer from misrepresenting any material aspect of a prize promotion. Thus, a seller or telemarketer may not make any false statement about any aspect of a prize promotion that is likely to affect the consumer's decision to purchase any goods or services offered in conjunction with the prize promotion, to purchase them at the offered price, or to pur-

chase them from that particular seller. Examples of such aspects of a prize promotion that may not be misrepresented include:

- the odds of being able to receive a prize (for example, falsely saying that all entrants are guaranteed to win a prize, or falsely claiming that a particular person is "*the top winner in the entire state*");
- the nature or value of a prize (for example, claiming a prize is an "*expensive genuine dia-*

mond tennis bracelet," when in fact that prize has only a nominal value or does not contain any diamonds); or

- that a purchase or payment is required to win a prize or participate in a prize promotion (for example, claiming that a consumer must purchase magazine subscriptions in order to enter a prize promotion).

6. Material Aspects of Investment Opportunities

The Rule prohibits sellers and telemarketers from misrepresenting any material aspect of an investment opportunity. As with prize promotions, a seller or telemarketer may not make any false or misleading statements about any aspect of an investment opportunity that are likely to affect the consumer's decision to purchase that investment, or that are necessary to permit the consumer to make an informed purchasing decision. The Rule states examples of material aspects of an investment opportunity: the risk involved in the investment; the liquidity of the investment; or the earnings potential or profitability of the investment. Other material aspects may include, depending on the nature of the investment opportunity: the markup over acquisition costs; the past performance, marketability, or value of an investment; or fees charged in credit-financed purchases of precious metals.

7. Affiliations or Endorsements

Finally, the Rule prohibits any seller or telemarketer from misrepresenting their affiliation with, or endorsement by, any government or third-party organization. For example, sellers or telemarketers cannot falsely claim that they are members of the Better Business Bureau or the local chamber of commerce, or that they are affiliated with the local police or some national charity. Nor can a telemarketer create the impression in a consumer's mind that the postal permit number displayed on a mail solicitation is a sign that the U.S. Postal Service has approved a promotion. In fact, a seller or telemarketer may not falsely claim any affiliation with, or endorsement by, any charitable, governmental, police, civic, or similar organization. In addition, a seller or telemarketer cannot falsely claim or create the impression in the consumer's mind that they are related to or affiliated with a company with which the consumer usually does business.

How Does The Rule Affect Users of “Demand Drafts” or “Phone Checks”?

The Rule requires verifiable authorization for use of bank account information to obtain payment. The Rule requires that a seller or telemarketer have a consumer’s “*express verifiable authorization*” to use that consumer’s bank account information to obtain payment through so-called “*phone checks*” or “*demand drafts*.” (This requirement does not apply to conventional checks, written, signed, and mailed to the seller or telemarketer by the consumer.) The requirement for verifiable authorization for “*phone checks*” can be satisfied by an advance written authorization from the consumer, by a tape recording of the consumer giving express oral authorization, or by a written confirmation of the transaction sent to the consumer prior to the submission of the draft for

payment. If the tape recording method is used, the seller or telemarketer must provide the consumer’s bank, upon request, with a copy of the consumer’s verifiable authorization. If the post-sale written confirmation method is used, the seller or telemarketer must offer, and at the consumer’s request provide, a full refund to the consumer in the event the confirmation is inadequate or incorrect. The seller or telemarketer must keep the consumer’s verifiable authorization for two years from the date of the sales transaction.

Written Authorization

Any form of written authorization from a consumer is acceptable. For example, a consumer



may transmit written authorization to the seller or telemarketer by facsimile, or may send a “voided” signed check as written authorization.

Tape Recorded Authorization

Any tape recorded authorization² for a demand draft must *clearly* demonstrate that the consumer has received each of six specific pieces of information about the transaction and that the consumer has authorized that funds be taken from his or her bank account based on the required disclosures that the seller or telemarketer has provided. Without more, a general question such as “Do you understand all the terms of the sale?” followed by a consumer’s “uh-huh” or “yeah” is not enough to demonstrate authorization. The tape recording must show that the consumer received each piece of information listed below and that, based on that information, the consumer understood and acknowledged each term of the transaction, and authorized the transaction. A consumer must be told and must acknowledge:

- the date of the draft(s);
- the amount of the draft(s);
- the name of the consumer from whose account funds will be paid;
- the number of draft payments authorized, if more than one;
- a telephone number answered during normal business hours that the consumer can call with questions; and

- the date of the consumer’s authorization.

Authorization by Written Confirmation

If a seller or a telemarketer opts for verifiable authorization by means of a written confirmation, the confirmation must be sent to the consumer *before* any check, draft, or other form of negotiable paper bearing that consumer’s bank account information is submitted for payment. That does not mean that a seller or telemarketer must wait to submit this information until a consumer *receives* the confirmation; it must only be *sent* before the check, draft, or other form of negotiable paper is submitted for payment.

The written confirmation must contain all the information required in a tape recorded authorization (see previous page). Additionally, if a seller or telemarketer chooses to use written confirmations, the seller or telemarketer must have a refund policy in place, and must disclose in the written confirmation how to obtain a refund in the event the consumer disputes the written confirmation. (Of course, the Rule’s prohibition on misrepresenting a refund policy, discussed at page 17, applies in the context of obtaining verifiable authorization by means of written confirmation.)



The Rule leaves it to the seller or telemarketer to determine what procedures are necessary to ensure that confirmations are sent prior to submission, to put such procedures in place, and to ensure that records are generated and maintained to document that confirmations are sent at the appropriate time and that required refunds are provided.

Who is responsible for obtaining verifiable authorization?

Under the Rule, sellers and telemarketers that receive payment by means of “phone checks” are responsible for obtaining verifiable authorization on those phone checks. That means that even if a seller or telemarketer uses the services of some other party to process or submit phone checks, the seller or telemarketer remains responsible to ensure that the disclosure requirements of the Rule for verifying authorization are fulfilled. Under the Rule, a third party can also be held liable for violating the Rule if, as explained on the next page, the third party substantially assists a seller or telemarketer and knows or consciously avoids knowing that the seller or telemarketer is violating the Rule.

Processing and submitting bank account information constitutes substantial assistance to a seller or telemarketer. Therefore, if a third party is processing bank account information for a seller or telemarketer, that third party should ensure that whoever is obtaining consumers’ account information obtains verifiable authorization in accordance with the Rule’s requirements. A third party who processes and submits bank account information cannot avoid liability by not asking questions about whether authorization

procedures comply with the Rule. Likewise, they can be held liable under the Rule if they know that the authorization procedures do not comply with the Rule and they process or submit bank account information for payment anyway.

Does the Rule apply if I only supply the software to process or submit bank account information for payment?

Maybe. Providing the means to submit a consumer’s bank account information for payment constitutes substantial assistance to a seller or telemarketer. If a seller or telemarketer who is using the software is violating the Rule, a law enforcement agency may inquire as to the extent the software provider ensured that authorization procedures were in place to comply with the Rule. A software provider cannot merely sell its product with its eyes closed to the business practices used by the software purchaser, consciously avoiding any knowledge of the wrongdoing. Demand drafts are a favorite payment method of deceptive telemarketers. Therefore, third parties should be aware of who they are doing business with and whether those they do business with are complying with the Rule.

The Rule Prohibits Assisting and Facilitating Sellers or Telemarketers Who Violate The Rule

It is a violation of the Rule for anyone to substantially assist a seller or telemarketer if that person knows or consciously avoids knowing that the seller or telemarketer is violating the Rule. A person violates the Rule if he or she knows of, or takes deliberate steps to ensure his or her own ignorance of, a seller's or telemarketer's Rule violations, yet helps the seller or telemarketer. The help that a third-party provides must be more than casual or incidental dealing with a seller or telemarketer that is unrelated to a violation of the Rule. For example, cleaning a telemarketer's office, delivering lunches to the telemarketer's premises, or engaging in some other activity with little or no relation to conduct that violates the Rule would not be enough to support liability as an assistor or facilitator.

Third parties who do business with telemarketers or sellers who telemarket should be aware that their dealings may provide a factual basis to support an inference that they know or deliberately remain ignorant of the Rule violations of these telemarketers and sellers. For example, a third

party that provides sellers or telemarketers with mailing lists, assistance in creating sales scripts or direct mail pieces, or any other substantial assistance when that third party either knows, or takes steps to avoid knowing, that the seller or telemarketer is engaged in a Rule violation, may be violating the Rule.

The Rule Prohibits Credit Card Laundering

Credit card laundering is basically the misuse of what is known as a “*merchant account*” with a financial institution. A merchant account is a kind of bank account; it is what a seller or telemarketer needs in order to gain access to a credit card collection and payment system and to obtain cash for goods and services sold. Credit card laundering not only violates the Rule; it is a criminal offense under federal law, as well as the law of some states.

Here’s how the system works for companies that make legitimate use of the credit card system. In order to be able to accept payment from a consumer who wishes to charge the price of goods or services to his or her credit card, a seller or telemarketer must have a “*merchant account*” with a financial institution that is a member of a credit card system (such as Visa or Mastercard) that issued the consumer’s credit card. When the consumer pays by credit card, the merchant generates a credit card sales draft, which the seller then deposits into the seller’s merchant account, and obtains the cash amount of the deposited draft. The financial institution sends the credit card sales draft through the particular credit card system, which posts a corresponding charge to the consumer’s credit card account.

So how does credit card laundering work? Sellers and telemarketers who are unable to establish a merchant account with a financial institution sometimes employ the unlawful services of a launderer (also known, inaccurately, as a “*factor*”). A launderer provides access to a merchant account — and the whole credit card collection and pay-

ment system — without the authorization of the financial institution or the credit card system. Obtaining access to the credit card system through another’s merchant account without the authorization of the financial institution is credit card laundering. Except as expressly permitted by a credit card system, it is a Rule violation for anyone:

- who has a merchant account to deposit into the credit card system any credit card sales draft generated by a telemarketing transaction that is not the result of a sale to the purchaser by the person who has the merchant account;
- to use or solicit someone who has a merchant account (or an employee, representative, or agent of someone who has a merchant account) to deposit into the credit card system any credit card sales draft generated by a telemarketing transaction that is not the result of a sale to the purchaser by the person who has the merchant account; or
- to obtain access to the credit card system through a business relationship or an affiliation with a merchant, when such access is not authorized under the terms of the merchant account or by the applicable credit card system.

The Rule Prohibits Specific Abusive Practices

The Rule prohibits a seller or telemarketer from engaging in certain conduct that is classified as abusive, including threats, intimidation, or the use of profane or obscene language, and requesting or receiving payment for credit repair services, recovery services, or advance-fee loans, before the promised goods or services are delivered. Each of these prohibitions is explained below.

Threats, Intimidation, and Profane or Obscene Language

All sellers and telemarketers are prohibited, in a telemarketing transaction, from using threats, intimidation, and profane or obscene language. This prohibition covers all types of threats, including threats of bodily injury and financial ruin, and threats to ruin credit. It also prohibits intimidation, including acts which put undue pressure on a consumer, or which call into question a person's intelligence, honesty, reliability, or concern for family. Repeated calls to an individual who has declined to accept an offer may also be an act of intimidation.

The Rule Imposes Payment Restrictions on Sales of Credit Repair Services

Credit repair services promise consumers with a bad credit history that the services can remove derogatory information from, or otherwise improve, the consumers' credit history, credit record, or credit rating, regardless of whether that information is accurate. The Rule prohibits any seller or telemarketer from requesting or receiving payment for any credit repair services before two events occur. First, the time frame within which the seller has represented that the promised services will be provided must have expired. Sellers can make representations about the time frame for the delivery of the services either orally or in writing, including in the contract for the services. If any discrepancy exists between the various rep-



representations by the credit repair seller, the longest time frame represented will determine when payment may be requested or received.

The second event that must occur before payment can be requested or received for credit repair services is that the seller must provide the consumer with evidence that the promised improvement in the con-

sumer's credit record has been achieved. The evidence must be in the form of a consumer report from a consumer reporting agency, issued more than six months after the results were achieved. Nothing in this Rule affects the requirement in the Fair Credit Reporting Act that a consumer report may only be obtained for a specified permissible purpose. For information on how to learn more about the Fair Credit Reporting Act, see page 31.

The abusive practice against which this prohibition in the Rule is directed is the deceptive marketing and sale of bogus credit repair services; it is not directed at the nondeceptive telemarketing of secured credit cards, or to legitimate credit monitoring services. No one can permanently remove or "erase" negative entries on a consumer's credit report if the information is accurate and current. Deceptive credit repair services may be able to cause negative credit information to disappear from a consumer's credit report temporarily by flooding a credit bureau with letters disputing the accuracy of the negative entries. However, once the credit bureau verifies with creditors that the negative items are accurate, they will reappear on a consumer's credit report and remain there for as long as seven years and, in the case of a bankruptcy, for ten years. If an item is inaccurate, incomplete, or more than seven or ten years old, a consumer on his or her own can remove or correct the information at no charge if he or she follows the dispute procedures set forth in the Fair Credit Reporting Act. Consumers do not need the services of any third parties to correct an inaccurate or out-of-date credit report. And nothing can be done by anyone to change a bad credit report that is accurate and up to date.

The Rule Imposes Payment Restrictions on Sales of Recovery Services

So-called "recovery services" target consumers who have already been victimized by telemarketing fraud. In these operations, a deceptive telemarketer calls a consumer who has lost money, or who has failed to receive a promised prize, in a previous scam. The recovery room telemarketer falsely promises to recover the lost money, or obtain the promised prize, in exchange for a fee paid in advance. After the fee is paid, the promised services are never provided. Typically the consumer never hears from the telemarketer again.

The Rule prohibits any recovery service from requesting or receiving payment for any goods or services purporting to assist a consumer to recover funds paid by the consumer in a previous telemarketing transaction, or to recover anything of value promised to a consumer in a previous telemarketing transaction, until seven business days after the recovered funds or other item is delivered to the consumer.

The Rule's restriction on when recovery rooms can seek and accept payment does not apply to services provided by licensed attorneys. In addition, the Rule takes aim only at recovery services that promise the return of money or other items of value paid for or promised to the consumer in a previous telemarketing transaction. It does not apply to attempts to recover money or items lost outside of telemarketing.

Debt collection services are not covered by this prohibition in the Rule. In fact, debt collection services are not covered by the Rule as a whole because they are not “*conducted to induce the purchase of goods or services,*” — a prerequisite for Rule coverage as dictated by the Rule's definition of “*telemarketing*” (explained on page 6). Debt collectors must comply, however, with the FTC's Fair Debt Collection Practices Act. For information on how to learn more about the Fair Debt Collection Practices Act, see page 31.

The Rule Imposes Payment Restrictions on Sales of Advance-Fee Loans

In advance-fee loan schemes, a telemarketer, in exchange for a fee, paid in advance, promises to obtain a loan for a consumer or represents a high likelihood of success in obtaining or arranging a loan or other extension of credit for a consumer, regardless of that consumer's credit history or credit record. As with recovery room schemes, after the consumer pays the fee, he or she typically never receives the promised loan or other extension of credit. Advance-fee loans are generally marketed to consumers with bad credit histories or who have difficulty obtaining credit for other reasons. In the past, advance-fee loans have required payment up front. The Rule now pro-

hibits a seller or telemarketer that guarantees or represents a high likelihood of success in obtaining or arranging a loan or other extension of credit from requesting or receiving payment until a consumer obtains the promised extension of credit.

This prohibition on advance fees for loans or other extensions of credit applies only if the seller or telemarketer guarantees or represents a high likelihood of success in obtaining or arranging for a loan or other extension of credit. Legitimate creditors may offer various extensions of credit through telemarketing and may require an application fee or appraisal fee in advance, provided the creditor does not *guarantee* or *represent a high likelihood* that the consumer will obtain the extension of credit. This prohibition in the Rule also does not apply to firm, “*preapproved*” offers of credit by a creditor who properly uses a “*pre-screened*” list in accordance with the FTC staff commentary on the Fair Credit Reporting Act (FCRA). For more information on how to learn more about the FCRA, see page 31.

The Rule Imposes Calling Restrictions

The Rule prohibits telemarketers from:

- calling consumers repeatedly or continuously, with the intent to annoy, abuse, or harass any person at the called number;
- calling any consumer who previously has requested that he or she not be called again (the “do not call” provision, explained in detail below); or
- calling any consumer’s residence before 8:00 A.M. or after 9:00 P.M. local time at the consumer’s location.

The Rule also prohibits sellers from directing telemarketers to make such calls.

The “Do Not Call” Provision

A telemarketer may not call a consumer who previously has requested to receive no more calls from, or on behalf of, a particular seller whose goods or services are being offered. Similarly, a seller that has been requested by a consumer not to call again may not cause a telemarketer to call that consumer. Sellers and telemarketers are responsible for keeping “do not call lists” of those consumers who have requested not to receive calls placed by, or on behalf of, a particular seller. Calling a consumer who has requested not to be called is a Rule violation and a telemarketer or seller that engages in the practice of making such calls risks a \$10,000 civil penalty per violation.

A seller or telemarketer will not be liable for a civil penalty for calling a consumer who has requested no more calls, however, if:

- the seller or telemarketer has established and implemented written procedures to honor consumers’ requests that they not be called;
- the seller or telemarketer has trained its personnel in these procedures;
- the seller or telemarketer has maintained a “do not call” list; and
- the call is a result of error.

What happens if a consumer is called after he or she has requested not to be called? If a consumer is called who has requested not to be called by or on behalf of a par -



particular seller, the seller and telemarketer may be liable for a Rule violation. If an enforcement investigation finds that neither the seller nor the telemarketer had written "do not call" procedures in place, both would be liable for the Rule violation. If the investigation reveals that the seller had written "do not call" procedures but the telemarketer ignored the proce-

dures, the telemarketer would be liable for the Rule violation. The seller may also be liable if the investigation finds that the seller did not implement its written procedures. Ultimately, a seller is responsible for keeping a current "do not call" list, whether it is through a telemarketing service it hires or through its own efforts.

What does "error" mean? If a seller or telemarketer has and implements written "do not call" procedures,

it will not be liable for a Rule violation if a subsequent call is the result of error, but it may be subject to an enforcement investigation. The investigation would focus on the effectiveness of the procedures in place, how they are implemented, and if all personnel are trained in the "do not call" procedures. If there is a high incidence of "errors," it may be determined that the procedures are inadequate to comply with the Rule's "do not call" requirements and thus

there is a Rule violation. On the other hand, if there is a low incidence of "errors," there may not be a Rule violation. The determination of whether an excusable "error" occurs will be based on the facts of each individual case. A safe rule of thumb to ensure that adequate "do

not call" procedures are implemented would be to periodically test for quality control and effectiveness.

To which "seller" does a "do not call" request apply? Distinct corporate divisions of a single corpora-

tion are considered separate sellers for purposes of the Rule. Factors used to determine if corporate divisions will be treated as separate sellers include: (1) whether there is substantial diversity between the operational structure of the divisions; and

(2) whether the goods or services sold by the divisions are substantially different from each other. Thus, if a consumer tells one division of a company not to call again, a distinct corporate division of the same company may make another telemarketing call to that consumer. However, a single seller without distinct corporate divisions may not call a consumer who

asks not to be called again, even if that seller is offering a completely different good or service for sale.

- all verifiable authorizations for demand drafts.
- Each of these categories is explained below.

Advertising and Promotional Materials

Sellers and telemarketers must keep at least one specimen copy of all substantially different advertising, brochures, telemarketing scripts, and promotional materials. They need not keep copies of documents that are virtually identical but for immaterial variations or minor alterations.

Obviously, if no scripts, advertising, or promotional materials are used in connection with the telemarketing activity, then no such materials would need to be retained.

The Rule Requires Recordkeeping

The Rule requires most sellers and telemarketers to keep certain records that relate to their telemarketing activities. (The Rule's recordkeeping requirements do not apply to sellers and telemarketers of nondurable office and cleaning supplies; this is explained at page 9.) The following records must be maintained for two years from the date that the record is produced:

- advertising and promotional materials;
- information about prize recipients;
- sales records;
- employee records; and

Telemarketing Sales Rule, Part 310

Sections

310.1 Scope of regulations in this part.

310.2 Definitions.

310.3 Deceptive telemarketing acts or practices.

310.4 Abusive telemarketing acts or practices.

310.5 Recordkeeping requirements.

310.6 Exemptions.

310.7 Actions by states and private persons.

310.8 Severability.

Authority: 15 U.S.C. 6101-6108.

310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108.

310.2 Definitions.

(a) Acquirer means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(b) Attorney general means the chief legal officer of a State.

(c) Cardholder means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(d) Commission means the Federal Trade Commission.

(e) Credit means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(f) Credit card means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(g) Credit card sales draft means any record or evidence of a credit card transaction.

(h) Credit card system means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(i) Customer means any person who is or may be required to pay for goods or services offered through telemarketing.

(j) Investment opportunity means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(k) Material means likely to affect a person's choice of, or conduct regarding, goods or services.

(l) Merchant means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.

(m) Merchant agreement means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.

(n) Outbound telephone call means a telephone call initiated by a telemarketer to induce the purchase of goods or services.

(o) Person means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(p) Prize means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(q) Prize promotion means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(r) Seller means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(s) State means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana

Islands, and any territory or possession of the United States.

(t) Telemarketer means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer.

(u) Telemarketing means a plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term “*further solicitation*” does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer’s call or in a substantially similar catalog.

310.3 Deceptive telemarketing acts or practices.

(a) Prohibited deceptive telemarketing acts or practices.

It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

- (1)** Before a customer pays for goods or services offered, failing to disclose, in a clear and conspicuous manner, the following material information:
- (i)** The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;
 - (ii)** All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;
 - (iii)** If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller’s policy; or, if the seller or telemarketer makes a representa-

tion about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion; and the no purchase/ no payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate; and

(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(2) Misrepresenting, directly or by implication, any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller’s refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability; or

(vii) A seller’s or telemarketer’s affiliation with, or endorsement by, any government or third-party organization;

(3) Obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person’s checking, savings, share, or similar account, without that person’s express verifiable authorization. Such authorization shall be deemed verifiable if any of the following means are employed:

(i) Express written authorization by the customer, which may include the customer's signature on the negotiable instrument; or

(ii) Express oral authorization which is tape recorded and made available upon request to the customer's bank and which evidences clearly both the customer's authorization of payment for the goods and services that are the subject of the sales offer and the customer's receipt of all of the following information:

(A) The date of the draft(s);

(B) The amount of the draft(s);

(C) The payor's name;

(D) The number of draft payments (if more than one);

(E) A telephone number for customer inquiry that is answered during normal business hours; and

(F) The date of the customer's oral authorization; or

(iii) Written confirmation of the transaction, sent to the customer prior to submission for payment of the customer's check, draft, or other form of negotiable paper, that includes:

(A) All of the information contained in 310.3(a)

(3)(ii)(A)-(F); and

(B) The procedures by which the customer can obtain a refund from the seller or telemarketer in the event the confirmation is inaccurate; and

(4) Making a false or misleading statement to induce any person to pay for goods or services.

(b) Assisting and facilitating. It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates 310.3(a)

or (c), or 310.4 of this Rule.

(c) Credit card laundering. Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

310.4 Abusive telemarketing acts or practices.

(a) Abusive conduct generally. It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's

credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person, for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person.

This provision shall not apply to goods or services provided to a person by a licensed attorney; or

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person.

(b) Pattern of calls.

(1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number; or

(ii) Initiating an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered.

(2) A seller or telemarketer will not be liable for violating 310.4(b)(1)(ii) if:

(i) It has established and implemented written procedures to comply with 310.4(b)(1)(ii);

(ii) It has trained its personnel in the procedures established pursuant to 310.4(b)(2)(i);

(iii) The seller, or the telemarketer acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted, in compliance with 310.4(b)(1)(ii); and

(iv) Any subsequent call is the result of error.

(c) Calling time restrictions. Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 A.M. and 9:00 P.M. local time at the called person's location.

(d) Required oral disclosures. It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call to fail to disclose promptly and in a clear and conspicuous man-

ner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion.

310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by 310.5(a) in any form, and in the manner, format, or place as they keep such records in the ordi-

nary course of business. Failure to keep all records required by 310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with 310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with 310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this Section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this Section.

310.6 Exemptions.

The following acts or practices are exempt from this Rule:

(a) The sale of pay-per-call services subject to the Commission's "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR Part 308;

(b) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," 16 CFR Part 436;

(c) Telephone calls in which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller;

(d) Telephone calls initiated by a customer that are not the result of any solicitation by a seller or telemarketer;

(e) Telephone calls initiated by a customer in response to an advertisement through any media, other than direct mail solicitations; provided, however, that this exemption does not apply to calls initiated by a customer in response to an advertisement relating to investment opportunities, goods or services described in 310.4(a)(2) or (3), or advertisements that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit;

(f) Telephone calls initiated by a customer in response to a direct mail solicitation that clearly, conspicuously, and truthfully discloses all material information listed in 310.3(a)(1) of this Rule for any item offered in the direct mail solicitation; provided, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, goods or services described in 310.4(a)(2) or (3), or direct mail solicitations that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit; and

(g) Telephone calls between a telemarketer and any business, except calls involving the retail sale of nondurable office or cleaning supplies; provided, however, that 310.5 of this Rule shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

310.7 Actions by States and private persons.

(a) Any attorney general or other officer of a State authorized by the State to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, and shall include a copy of the State's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the State or private person shall serve the Commission with the required notice immediately upon instituting its action.

Federal Trade Commission

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